

From: Julie Ann Carter
To: Carl Kendell; Chris Hansen; Dana Dean; Earlene Russell; Emily Lewis;...
Date: 2/13/2012 3:16 PM
Subject: 2012-004 S/003/076 Saturday Night 1 and 2
Attachments: 2012-004_20120213_FindingsOfFactConclusionsOfLawAndOrder.pdf

Attached is:

-Findings of Fact, Conclusions of Law, and Order, filed February 13, 2012.

The Board granted the Division's requests for this cause.

Under Utah Code Ann. § 63G- 4-204 to 208 and Utah Admin. Code R647-5-101(1), the Board has considered and decided this Cause as a formal adjudication. Perihelion's NOI, #S/003/0076, for the Saturday Night Mine # 1 and # 2 in Section 4, Township 6N, Range 19W SLB&M, Box Elder County, Utah is withdrawn for failure to substantially reclaim the mine site, maintain an adequate surety, and pay permit fees.

Letter of Credit #G48-2007 for \$19,000 from Bank of Jackson County is forfeited to the Division to fund reclamation of the mine site.

The Division is ordered to begin reclamation work at the Saturday Night Mine # 1 and # 2 mine site in Section 4, Township 6N, Range 19W SLB&M, Box Elder County, Utah.

The Attorney General shall take such civil action against Perihelion as necessary and appropriate to recoup any additional costs associated with the reclamation, including attorney's fees.

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Please note: Beginning Tuesday, September 6, 2011, our agency hours will be 8am-5pm, Monday-Friday.

FILED

FEB 13 2012

SECRETARY, BOARD OF

**BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE PETITION BY
THE DIVISION OF OIL, GAS AND
MINING FOR AN ORDER TO: (1)
WITHDRAW NOI S/003/0076 FOR
SATURDAY NIGHT #1 and SATURDAY
NIGHT #2 MINE; (2) FORFEIT LETTER
OF CREDIT NO. G48-2007 FROM BANK
OF JACKSON COUNTY, FL; (3) TO
AUTHORIZE A CIVIL SUIT TO COLLECT
THE AMOUNT OF THE SURETY; and (4)
TO TAKE ALL OTHER ACTIONS
NECESSARY TO RECLAIM THE LANDS
AT SEC. 4, T 6N, R 19W SLB&M, BOX
ELDER COUNTY, UTAH.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

Docket No. 2012-004

Cause No. S/003/0076

This Cause came on regularly for hearing before the Board of Oil, Gas, and Mining ("Board") at approximately 10:30 a.m. on Wednesday, January 25, 2012, in the Auditorium of the Department of Natural Resources building, 1594 West North Temple, Salt Lake City, Utah. The following members of the Board were present and participated in the hearing: Ruland J. Gill, Jr., Kelley L. Payne, Chris D. Hansen, Carl F. Kendell, Jean Semborski, Jake Y. Harouny, and James T. Jensen, Chairman. Michael S. Johnson, Assistant Attorney General, represented the Board.

Testifying on behalf of Petitioner, the Division of Oil, Gas, and Mining ("Division" or "DOGM"), in favor of the withdrawal and forfeiture was Mr. Lynn Kunzler, DOGM Senior Reclamation Specialist. The Division was represented by Emily E. Lewis, Assistant Attorney

General. No persons appeared on behalf of the Respondent, Perihelion Global Inc.

("Perihelion"), or any other party or person in opposition to the petition.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised, and for good cause, hereby makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Notice of the time, place, and purposes of the hearing was mailed to all interested parties by first class mail, postage prepaid, and was duly published in the Salt Lake Tribune, Deseret Morning News, and the Box Elder News Journal pursuant to the requirements of Utah Admin. Code R641-106-100.
2. Perihelion is a Florida corporation that was once was qualified to do business in Utah, but has failed to renew its business license since July 6, 2010.
3. In early 2007 Perihelion submitted a Notice of Intention ("NOI") to the Division for a small mining operation, the Saturday Night Mine #1 and #2 ("mine"), located in Section 4, Township 6N, Range 19W SLB&M, Box Elder County, Utah ("mine site"). The stated purpose of the NOI was to mine existing tailings piles on site and to eventually reenter existing mining portals for further mineral extraction.
4. The Division approved NOI S/003/0076 on April 10, 2007, and designated Perihelion as the Operator of the mine.
5. Pursuant to its Small Mine Reclamation Contract signed on March 27, 2007, Perihelion, as Operator, agreed to be responsible for reclaiming the mine site.

6. On March 27, 2007 the Division approved Letter of Credit #G48-2007 ("LOC") obtained by Perihelion from Bank of Jackson County ("Bank") in the sum of \$19,000 as a reclamation surety for the mine site.
7. At some point in time between 2007 and 2008 Perihelion constructed a 2750-foot access road to the mine site. The first half of the road was graded flat land and the second half of the road followed the incline of the mountain and was blade cut creating deep cuts in the mountainside.
8. On June 22, 2010 the Division notified Perihelion in writing that its permit fees, reclamation surety escalation, and annual reports were past due. Perihelion did not respond to this letter.
9. During a routine inspection of the mine site in July, 2010, the Division found Perihelion had not conducted any mining at the mine site and had not made any efforts to reclaim the access road.
10. On November 2, 2010, the Division issued Perihelion Cessation Order MC-2010-17-12 citing failure to maintain adequate reclamation surety and failing to remit permit fees for 2009 and 2010. Perihelion did not respond to this Cessation Order.
11. On October 26, 2011, the Division presented a site draft letter to Bank drawing on the full \$19,000 of the LOC to fund reclamation of the mine site.
12. On December 9, 2011, the Division filed a Notice of Agency Action ("NAA") requesting the Board issue an order withdrawing approval of NOI S/003/0076, declaring LOC #G48-2007 forfeited, and authorizing the Division to pursue other civil action remedies against Perihelion and to reclaim the mine site.

13. After a prolonged exchange between the Utah Attorney General's Office, the Bank, and the Federal Deposit Insurance Corporation ("FDIC"), on December 12, 2011, Division Counsel, Assistant Attorney General Steven F. Alder, confirmed in a letter to the Bank and the FDIC, that the Bank had honored the LOC and had forwarded the full sum of \$19,000 to the Division. The December 12 letter gave notice that the claim against the Bank for initially failing to honor the site draft presented by the Division was considered satisfied and would not be pursued further.
14. The \$19,000 was placed in a Zion's Bank account in Salt Lake City, Utah, pending the Board's declaration the LOC is forfeited to the Division.
15. At the Hearing, the Board voted unanimously to approve the Division's request based on the recommendation of the Division's witness, Lynn Kunzler, that Perihelion failed to substantially reclaim the mine site and failed to maintain an adequate surety.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place, and purpose of the hearing was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board.
2. Under Utah Code Ann. § 40-8-6 the Board has jurisdiction over all of the interested parties and the subject matter of the NAA, and has the power and authority to make and issue the Order herein set forth.

3. Under Utah Code Ann. § 40-8-13 Perihelion was required to and obtained a NOI and was bound by the terms of the NOI before it commenced mining operations at the Saturday Night Mine #1 and #2 mine site.
4. Under Utah Admin. Code R647-3-111 and its Reclamation Contract Perihelion is required to reclaim the Saturday Night Mine #1 and #2 mine site.
5. Under Utah Code Ann. § 40-8-16(2)(a),(b) Perihelion's NOI may be withdrawn because the operator "substantially fail[ed] to perform reclamation" or "fail[ed] to provide and maintain surety as required."
6. Under Utah Code Ann. § 40-8-14(6), after notice and hearing, the Board may declare Perihelion's reclamation surety forfeited for failing to "carry out the necessary land reclamation as outlined in the approved [NOI]."
7. Under Utah Admin. Code R647-3-112, as Perihelion failed to conduct reclamation, the Board may, after notice and hearing, order that surety filed for such purpose be forfeited, order the Division take appropriate action to reclaim the mine site, and order the Attorney General recover in a civil action against Perihelion any excess reclamation costs and expenses, including attorney's fees. Any residual funds will be returned to the appropriate entity claiming the funds.

ORDER

Based upon the Request, testimony, and evidence submitted, and the Findings of Fact and Conclusions of Law stated above, the Board hereby Orders

1. Under Utah Code Ann. § 63G-4-204 to 208 and Utah Admin. Code R647-5-101(1), the Board has considered and decided this Cause as a formal adjudication.
2. The Division's Requests in this Cause are granted.
3. Perihelion's NOI, #S/003/0076, for the Saturday Night Mine # 1 and # 2 in Section 4, Township 6N, Range 19W SLB&M, Box Elder County, Utah is withdrawn for failure to substantially reclaim the mine site, maintain an adequate surety, and pay permit fees.
4. Letter of Credit #G48-2007 for \$19,000 from Bank of Jackson County is forfeited to the Division to fund reclamation of the mine site.
5. The Division is ordered to begin reclamation work at the Saturday Night Mine # 1 and # 2 mine site in Section 4, Township 6N, Range 19W SLB&M, Box Elder County, Utah.
6. The Attorney General shall take such civil action against Perihelion as necessary and appropriate to recoup any additional costs associated with the reclamation, including attorney's fees.

7.

Reconsideration: As required by Utah Code Ann. § 63G-4-208(e) - (g), the Board hereby notifies all parties they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date this Order is issued. See Utah Code Ann. §§ 63G-4-401(3)(a) and 403. As an alternative to seeking immediate judicial review, but not as a prerequisite to seeking judicial review, the Board hereby notifies all parties they may, within 20 days after the date this Order is issued, request the Board Reconsider this Order. See Utah Code Ann. § 63G-4-302. The Board also notifies the parties they may, no later than the 10th day of the month

following the date this Order is issued, petition the Board for a Rehearing. *See* Utah Admin. Code Rule R641-110-100. If there is any conflict between the deadline for Reconsideration under Utah Code Ann. § 63G-4-302 and the deadline for Rehearing under Utah Admin. Code R641-110-100, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days of the denial.

8. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction may be divested by filing a timely appeal to seek judicial review of this Order with the Utah Supreme Court.

DATED this

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STATE OF UTAH
BOARD OF OIL, GAS AND MINING

—
T. Jensen,
1 West North Suite 1210
Salt Lake City, Utah 84116

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF OR LAW, AND ORDER for Docket No. 2012-004, Cause No. S/003/0076 to be mailed with postage prepaid, this day of 2012, to the following:

Frank A. Baker
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Willie Ann Carter